



**ZONING ADMINISTRATOR PERMIT  
STAFF REPORT  
FEBRUARY 23, 2012**

**Project:** METROPCS LYNX DRIVE - (PLN2011-00201)

**Proposal:** To consider a Zoning Administrator Permit and Major Encroachment Permit for a wireless telecommunications facility consisting of six panel antennae mounted on an existing utility pole and four equipment cabinets on a new 200-square-foot concrete pad.

**Recommendation:** Approve based upon findings and subject to conditions

**Location:** 45900 block of Mission Boulevard (Near Rabbit Court) in the Mission San Jose Community Plan area.  
APN 519-1704-001-00  
(See aerial photo next page)

**Area:** 200 square foot new concrete pad on a 2.98-acre lot and six panel antennae on an existing pole in a planter within the public right-of-way

**People:** Patrick Cruzen, MetroPCS, Applicant  
Vineyard Hills of Fremont Homeowner Association, Owner (equip. area)  
City of Fremont, Owner (Right-of-Way)  
Joint Pole Authority, Owner (utility pole)  
Joel Pullen, Staff Planner (510) 494-4436; [jpullen@fremont.gov](mailto:jpullen@fremont.gov)

**Environmental Review:** A Negative Declaration has been prepared and circulated for this project in accordance with the California Environmental Quality Act (CEQA).

**General Plan:** Private Open Space, Public Facility (Right-of-Way)

**Zoning:** Planned District P-84-14

**EXECUTIVE SUMMARY:**

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The applicant proposes to install a new wireless telecommunications facility by placing six panel antennae at 33 feet on an existing 47-foot tall PG&E overhead power utility pole along Mission Boulevard. Four equipment cabinets are proposed to be located on a new concrete pad in the landscape buffer between Mission Boulevard and Lynx Drive on homeowners' association property. Because a portion of the facility is within the public right-of-way (ROW) and a portion is within private property, both a Major Encroachment Permit and a Zoning Administrator Permit are required. The site meets respective requirements for both applicable permits. Staff recommends approval based upon findings and subject to conditions.

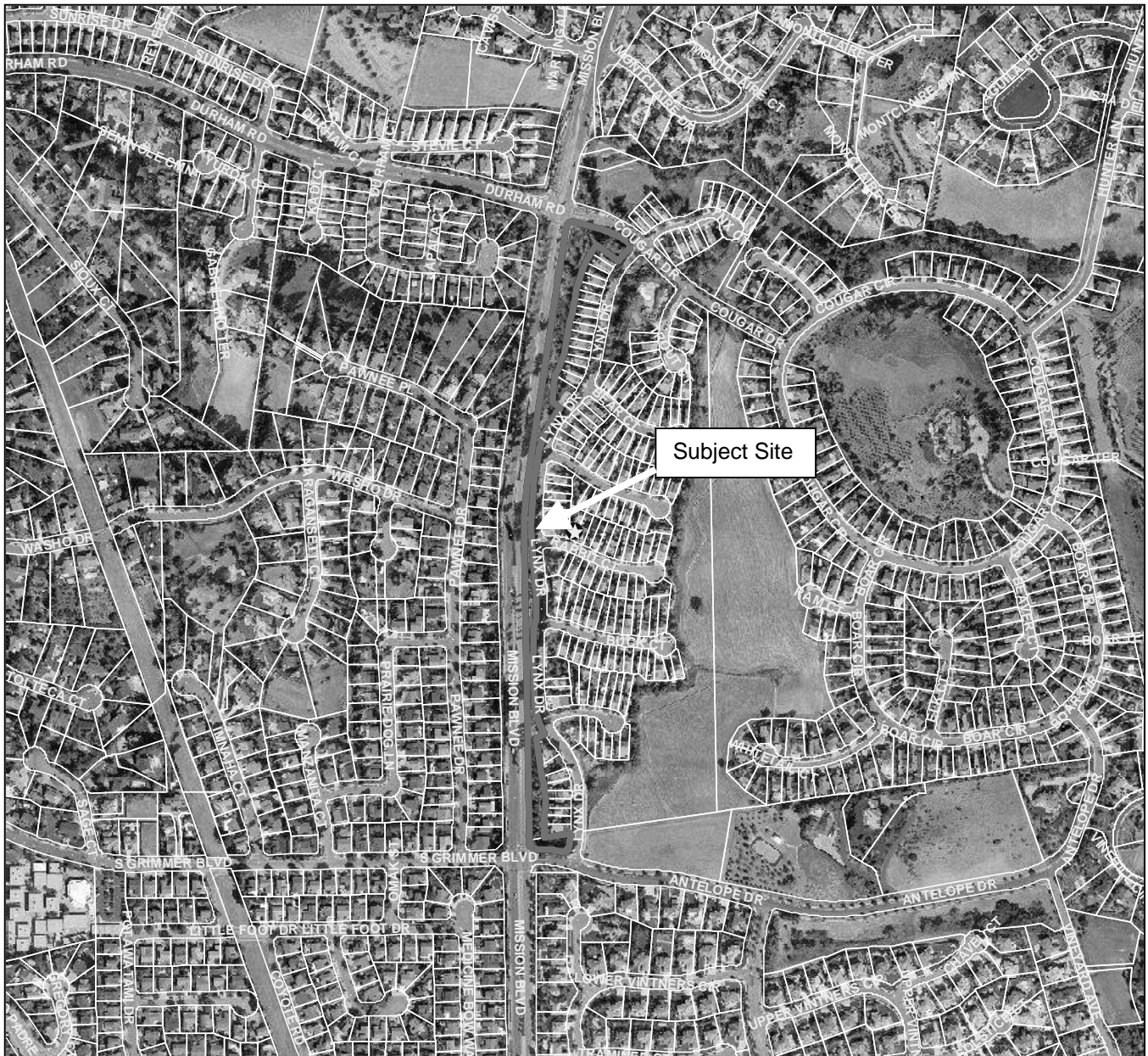


Figure 1: Aerial Photo (2009) of Project Site and Surrounding Area.



**SURROUNDING LAND USES:**

- North: Private Open Space and Public ROW adjoining Residential
- South: Private Open Space and Public ROW adjoining Residential
- East: Vineyard Hills Planned District, P-84-14
- West: Single-family residential across Mission Blvd., R-1-6 (H-I)

## **BACKGROUND AND PREVIOUS ACTIONS:**

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The Vineyard Hills subdivision was built on the eastern side of Mission Boulevard between Cougar Drive (Durham) and Antelope Drive (South Grimmer) through Planned District P-84-14 in 1984. Development of the project included construction of a substantial landscape buffer 25 to 40 feet wide separating Mission Boulevard from the newly-constructed Lynx Drive. The landscaped buffer includes dense shrubs and ground cover landscaping and mature trees. Three additional wireless installations exist in the vicinity. Two similar installations on utility poles northerly and southerly of this location and one facility mounted on a light standard within the public ROW.

## **PROCEDURE FOR HEARING**

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There are two required permit approvals for the proposed project. The City Engineer shall consider the proposed project facility in the right-of-way as a Major Encroachment and the Zoning Administrator shall consider the related accessory equipment as a Zoning Administrator Permit. The City Engineer and Zoning Administrator are charged with the following tasks:

1. Consider a request for approval of a Major Encroachment, based on requirements of Section 6-1303 of the Fremont Municipal Code for the proposed installation of the façade mounted wireless telecommunications facility.
2. Consider request for approval of a Zoning Administrator Permit, based on findings specified in Section 8-22552 of the Fremont Municipal Code and consistency with Ordinance No. 2213 pertaining to Development Standards for Siting of Wireless Telecommunication Facilities to allow for accessory equipment in support of a façade mount wireless facility.

## **PROJECT DESCRIPTION:**

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This Zoning Administrator Permit and Major Encroachment Permit proposal would place six Long Term Evolution (LTE) antennae onto a new wireless telecommunication facility on a new horizontal mounting arm centered at 33 feet high on a 47-foot high utility pole. The antennae project from the pole at the design minimum of 24 inches from the pole to the nearest point of the antenna mounts, with two sets of two antennae mounted on the eastern side of the pole, and one set of antennae mounted on the west side of the pole. At grade, four cabinets are proposed within a new 200 square foot equipment area in a landscaped area on private property. See Exhibit "A" for detailed information on the installation.

## **PROJECT ANALYSIS:**

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The consideration of the project is governed by both the City's local zoning and public street regulations and the Federal Telecommunications Act (47 USCS § 332). Under the City's local regulations, in order to approve the project it must be consistent with the General Plan and Fremont Municipal Code requirements and comply with the development standards for wireless telecommunication facilities set forth in the Fremont Telecommunications Ordinance (Ordinance No. 2213). The Federal Telecommunications Act limits the consideration of the project under these local standards in two significant ways. First, the federal law prohibits the City from either conditioning or denying the project based on concerns stemming from the environmental effects of radio frequency emissions ("RF") if the proposed facility complies with federal RF standards. Secondly, the federal law prohibits the City from denying the project if (a) the facility is necessary to fill a significant service gap in the applicant's wireless network and (b) the facility is the least intrusive means of filling the service gap.

***General Plan Conformance:***

The existing General Plan land use designations for the project site are Private Open Space (within the landscaped private property area) and public facility for the utility pole located within the public right-of-way. The proposed project is consistent with the existing General Plan land use designations for the project site because, per Goal 9-5, “high-quality, inexpensive communications networks available to the community” are desirable. Additionally, the City has Community Character Element aesthetic policies that are applicable to the proposed facility. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

Policy 4-5.1—Buffering and Screening: Provide visual buffers or screening between adjacent uses which are potentially incompatible.

Analysis: The City of Fremont General Plan requires visual buffers between adjacent uses. The facility is proposed in an existing landscape area between two public streets. The adjacent trees cover and existing/proposed landscaping is sufficient, in this instance, to adequately buffer the facility’s visibility from adjacent homes and the public right-of-way.

Policy 4-5.5—Scenic Routes:

Analysis: Mission Boulevard is identified as a Scenic Corridor per General Plan Diagram 4-6. Along Mission Boulevard, the scenic corridor designation expresses an intent to maintain or improve visual quality, but does not expressly limit abutting uses. The addition of a wireless facility as described herein, because of strategic placement for adequate screening by adjacent landscape features, does not degrade the overall aesthetic of Mission Boulevard.

***Zoning Regulations:***

As set forth in Section 8-22161.1 [Telecommunication Facilities] of the Fremont Municipal Code (FMC), wireless telecommunication facilities are allowed in all zoning districts in accordance with the development standards adopted by Ordinance No. 2213. Per Land Use Compatibility Standard B-1, Façade and roof-mounted facilities are permitted in all areas. According to the Land Use Matrix, the proposed facility would therefore be a permitted use. However, per the specific Design Guidelines for Façade-Mounted Telecommunication Facilities in standard E-1, a Zoning Administrator Permit is required for residentially-zoned sites. The location of the accessory equipment is within a residentially developed Planned District zoning designation (P-84-14).

***Design Analysis:******Site Planning:***

The proposed ground equipment (see the Major Encroachment section below for design analysis and discussion of the pole-mounted antennae in the right-of-way) is to be located in the landscape buffer between Lynx Drive and Mission Boulevard. This area is well-treed, with ample space for landscape buffering around the facility. Placement of the ground equipment in this area approximately centered between the adjacent roads represents the most aesthetically benign solution for this area, as discussed below

***Architecture:***

The proposed installation consists of equipment cabinets mounted at grade. The cabinets are approximately seven feet tall and mounted on a new concrete pad within the planter. No architectural

buffer (i.e. wall or enclosure) is proposed or recommended due to the nature of the area. In lieu of a fence or wall around the equipment, which would likely make the facility more noticeable, staff recommends the addition of landscaping as proposed, and painting of the cabinets as necessary to screen the cabinets, both subject to staff review and approval during detailed permit review. This requirement is included as condition 13.

*Development Standards for Siting Wireless Facilities:*

Standard E-5: Wherever possible, the equipment cabinets/structures shall be located away from open spaces and required yard setbacks and shall be placed within the building envelope area.

Analysis: The proposed location is within a private open space parcel removed from structures in the vicinity (the nearest houses are approximately 130 feet to the east across Lynx Drive). Because there is no suitable structure in the vicinity, and the ground equipment is appropriately screened within existing and proposed landscaping per standard C-7, the proposed facility location is acceptable.

Standard E-6: The equipment cabinets/structures shall be placed in areas so they are least visible from public rights-of-way, and have minimal visual impacts. Any visible portion of the equipment cabinet shall be treated to be architecturally compatible with the surrounding structures, and screened using appropriate techniques.

Analysis: The proposed installation is appropriately screened from the adjacent rights-of-way (Mission Boulevard and Lynx Drive) by way of additional landscaping (ten dodonaea—columnar shrubs). The proposed installation is compliant with this requirement.

Conditions are included requiring painting and other methods of minimizing visibility through staff review and approval of the building permit application. Staff also recommends a condition for a limited term approval of ten years for the entire facility, subject to renewal, to require periodic review of the facility as necessary to ensure the best installations into the future as technologies change and as sites are modified.

***Major Encroachment Permit:***

As previously noted, a Major Encroachment Permit is required for this facility because the installation is located within the right-of-way, and bringing cable from the private property to the joint pole includes a proposal to remove and replace the sidewalk and trench for electrical connections. A condition is included requiring staff review and approval of the final encroachment permit application per the requirements defined in FMC Sections 6-1302 and 6-1303.

***Traffic Safety:***

Per FMC 6-1303(b)(3), the damage or disruption to the right-of-way in terms of vehicular travel obstructions should be considered in the review of encroachment permits. Such encroachment is not a concern due to the height and location of the facility. The bottoms of the antennae, which extend into the street approximately 24 inches, are located 31 feet up on the pole above the bicycle lane. Since they are above the standard minimum height of 18 feet (per CPUC General Order No. 95), the installation complies with relevant traffic safety requirements.

*Pole-mounted Equipment Design:*

Per FMC 6-1303(b)(5), the “adverse aesthetic or blighting effect” of an installation must be considered in the review and approval of Major Encroachment Permit. The project is located within a substantial landscape buffer on the eastern side of Mission Boulevard between Durham Road and South Grimmer Boulevard. The landscape buffer is 25 and 40 feet wide, and contains mature pine trees and dense underbrush. The median of Mission Boulevard is also planted with rows of pine trees, creating a high screen on either side of the northbound lanes. A row of utility poles approximately 50 feet high carries power and cable near the sidewalk on the eastern side of Mission Boulevard. Similar facilities exist approximately 500 feet south and 500 feet north of this location. The facilities generally consist of horizontal mounting arms with several antennae mounted parallel to the utility pole.

The antennae are located on a horizontal mounting arm set perpendicular to the road with the nearest antennae set vertically at the minimum feasible distance from the utility pole. Staff worked with the applicant to minimize visibility of the modifications on this site to the maximum extent feasible by clustering four antennae nearer to the adjacent trees on the east and away from the road, while two antennae are located 24 inches from the west side of the pole. The California Public Utilities Commission (CPUC) General Order No. 95 requires this minimum of 24 inches climbing room be maintained for joint pole maintenance of items above and below the cellular facility (cable television and electrical lines). The antennae are set at the minimum feasible distance from the pole and strategically placed to maximize screening, and negative aesthetic effects are therefore minimized.

The applicant prepared photosimulations (See Informational Enclosure 2) demonstrating the expected imposition of the proposed installation into the visual landscape. The photosimulations demonstrate that the noticeability and aesthetic concerns are reduced by the placement of the facility. Mature trees in the median of Mission Boulevard and in the planter strip noted above (between Mission Boulevard and Lynx Drive) screen the installation from most points other than the road itself. Specifically, there is a row of trees approximately 150 feet long in the median that significantly reduces visibility of the facility as southbound traffic draws near. Pine trees to the immediate southeast of the pole eliminate visibility from Rabbit Court, reducing visibility of the site to traffic proceeding northbound on Mission Boulevard and a narrow window of southbound traffic on Lynx Drive. The utility nature of the existing pole, combined with the narrow view window and adjacent mature landscaping, prevents significant visibility of the structure.

## **FINDINGS FOR APPROVAL**

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Per FMC Section 8-22552, the Zoning Administrator must make the following findings in order to approve a Zoning Administrator Permit:

*Zoning Administrator Permit Findings:*

- a. The proposed use is consistent with the General Plan because provision of wireless services to the community is an express goal stated in the general plan;
- b. The site is suitable and adequate for the proposed use because the existing joint utility pole provides a unique opportunity to combine utility services using an existing facility in a location set away from existing residences and well screened by mature landscaping;

- c. The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services because the antennae are located sufficiently out of the traffic lanes on the perimeter of the road so as to not impede traffic;
- d. The proposed use would not have a substantial adverse economic effect on nearby uses because the installation is appropriately designed to blend in to its surroundings, and the convenient provision of wireless service options is an amenity to the area;
- e. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood or the community at large because the facility is required to be designed consistent with applicable laws related to structural, electrical, and radiational standards;
- f. The proposed design is compatible with adjacent uses within the district and the surroundings of the proposal because, as discussed in the report, the antennae and equipment are placed with appropriate regard for the aesthetic of the landscape buffer and existing joint utility pole.

The findings are also included in Exhibit "C" enclosed.

## **ENVIRONMENTAL REVIEW**

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A Draft Negative Declaration has been prepared and circulated per the requirements of the California Environmental Quality Act. Primary discussion in the Initial Study related to aesthetics and it was determined that based on the subject site setting and proposed design there was a less than significant environmental impact. See Informational Enclosure 1 for the complete analysis.

## **PUBLIC NOTICE AND COMMENT:**

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Public hearing notification is applicable. A total of 220 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed, and a public Hearing Notice was published by *The Argus* on February 7, 2012. As of the writing of this report, no comments had been received from the public.

## **ENCLOSURES:**

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### ***Exhibits:***

- Exhibit "A" [Site plan, Equipment plans, Antenna plan, and Elevations](#)
- Exhibit "B" [Draft Negative Declaration](#)
- Exhibit "C" [Findings and Conditions of Approval](#)

### ***Informational Items:***

- Informational 1 [Initial Study](#)
- Informational 2 [Photosimulations](#)

**RECOMMENDATION:**

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1. Hold public hearing.
2. Adopt Negative Declaration (Exhibit “B”) and find this action reflects the independent judgment of the City of Fremont.
3. Find Zoning Administrator Permit and Major Encroachment Permit PLN2012-00043 are in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use Chapter as enumerated within the staff report.
4. Approve Zoning Administrator Permit and Major Encroachment Permit PLN2012-00043, as shown on Exhibit “A”, subject to findings and conditions in Exhibit “C”.



**Existing Zoning**  
Shaded Area represents the Project Site

